



## Bill Draft 2019-SVfz-15: Various Sales Tax Changes.

2019-2020 General Assembly

<b>Committee:</b>	Revenue Laws Study Committee	<b>Date:</b>	March 11, 2020
<b>Introduced by:</b>		<b>Prepared by:</b>	Trina Griffin
<b>Analysis of:</b>	2019-SVfz-15		Committee Co-Counsel

**OVERVIEW:** *This bill draft makes two unrelated sales and use tax changes:*

- *It provides some relief to auctioneers and estate sale companies in light of recent law changes.*
- *It expands the scope of the sales and use tax exemption for equipment purchased by a large fulfillment facility.*

### AUCTIONEERS AND ESTATE SALES

**CURRENT LAW & BACKGROUND:** Auctioneers who buy or acquire tangible personal property by consignment or otherwise that they sell at retail must register with the Department of Revenue and collect and remit sales tax on the sales. This longstanding principle has remained unchanged for many years, but the passage of the marketplace facilitator provision has resulted in a re-examination of some aspects of this industry. As the Department sought to notify and educate the auctioneer industry about recent law changes, it became apparent that there is some inconsistency among auctioneers with respect to understanding their sales tax collection obligations. One particular area of confusion relates to the auctioning of livestock. While there is a sales tax exemption for "products of the farm," the exemption only applies if the seller of the farm products, which includes animals, is the producer – meaning the farmer. Those same farm products sold by an auctioneer are subject to tax. Another exemption that comes into play is when the purchaser is a qualifying farmer. If the purchaser meets the definition of a qualifying farmer and presents an exemption certificate at purchase, then the auctioneer is not required to collect tax, but the only animals exempt in this situation are baby chicks and poults. These exemptions may account for some of the inconsistency or confusion within the industry.

Another reason for the lack of clarity among auctioneers may be attributable to a Departmental interpretation from the early 1990s providing that an auctioneer is not liable for collecting and remitting sales tax when tangible personal property is sold for the owner at the owner's location. The Department has previously opined that, in this circumstance, the auctioneer is acting as an agent for the owner of the property and, therefore, steps into the shoes of the owner who would otherwise not have to collect sales tax on the casual and isolated sale of the owner's household possessions. Moreover, when an auctioneer conducts a sale on the owner's property, he never takes possession of the goods. This exemption does not apply, however, when a retail or wholesale business conducts a "going out of business" auction.

Against this backdrop, the General Assembly passed the marketplace facilitator provision in November 2019, with a February 1, 2020, effective date. The marketplace facilitator provision, by its very terms, makes a person who sells a third-party seller's items through a forum or marketplace operated by that person and who collects payment for those goods, a retailer required to collect sales tax. This effectively made certain auctioneers or operators of estate sales, retailers who are required to collect sales tax. Because the focus of the marketplace facilitator provision was primarily large online retailers who conduct

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third party sales, like Amazon, eBay, and Etsy, there was little discussion about the impact on the auctioneer/estate sale industry, and business owners who previously were not required to collect sales tax had a short period of time to come into compliance.

**BILL ANALYSIS:** This part of the bill does 3 things:

- It expands the sales tax exemption with respect to the purchase of certain animals by qualifying farmers to include livestock. "Livestock" is defined to mean cattle, sheep, goats, swine, horses, and mules. The current exemption applies only to baby chicks and poult.
- It authorizes the Secretary of Revenue to compromise the liability of an auctioneer with respect to the sale of livestock at auction for which the auctioneer failed to collect sales tax if the taxpayer can demonstrate a good faith effort to comply with the tax laws, which would include being registered as a retailer by July 1, 2020. This ability to compromise liability would apply only to tax due for a reporting period ending prior to July 1, 2020. This provision recognizes that there may have been some confusion or lack of clarity in the auctioneer industry with respect to sales tax collection obligations and gives the Secretary flexibility in the event an auctioneer is assessed for failure to collect. However, by no later than April 1, 2020, all auctioneers will have been notified by the Department, through both email and regular mail, as to their registration and collection obligations.
- It provides a five-month grace period to businesses that conduct tag sales or estate sales at either a person's home or farm without risk of assessment by the Department for failure to collect tax. The intent is to afford these businesses who previously did not have to collect tax with additional time to come into compliance with the marketplace facilitator provision that became effective February 1, 2020.

**EFFECTIVE DATE:** The expansion of the sales tax exemption for qualifying farmers who purchase livestock becomes effective July 1, 2020, and applies to sales occurring on or after that date. The remainder of the changes are effective when they become law.

## **LARGE FULFILLMENT FACILITIES**

**CURRENT LAW AND BACKGROUND:** In 2017, the General Assembly enacted a sales and use tax exemption for certain equipment purchased by a "large fulfillment facility." A large fulfillment facility is a facility used primarily for receiving, inventorying, sorting, repackaging, and distributing finished retail products for the purpose of fulfilling customer orders.

To qualify, the facility must invest at least \$100 million in real and tangible personal property within five years of the first property investment, as certified by the Department of Commerce, and must maintain an employment level of 400 people. There is a forfeiture provision in the event the employment level at the facility drops below 400.

Examples of equipment used in the distribution process would include automated storage and retrieval systems, conveyor and sortation systems, storage systems, racking and mezzanine systems, automated packaging systems, labeling and scanning equipment, and forklifts and other powered equipment.

At the time the legislation was being considered, the types of businesses that were considered to be the primary beneficiaries of the exemption were businesses like Amazon or Walmart. However, there are other types of fulfillment facilities. One example would be Publix, which is in the process of building a distribution center in Greensboro and that will fulfill orders for their various grocery stores. The existing exemption would not cover some types of equipment used at its fulfillment center.

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**BILL ANALYSIS:** This part of the bill would expand the sales tax exemption for equipment, accessories, attachments, and repair parts purchased by a large fulfillment facility to include the following:

- When these items are purchased by a contractor or subcontractor if the purchase is for use in the performance of a contract with the facility.
- Equipment used for baling previously used packaging for resale, sanitizing as required by federal law, and material handling.

The bill also provides a limited refund provision in the event a large fulfillment facility makes purchases of this equipment prior to July 1, 2020, when the exemption would become effective.

**EFFECTIVE DATE:** This part of the bill becomes effective July 1, 2020, and applies to sales occurring on or after that date.